

UNITED STATES BANKRUPTCY C



Order Filed on September 13, 2017
by Clerk
U.S. Bankruptcy Court
District of New Jersey

In re

BENJAMIN JEFFREY ASHMORE,
Debtor.

Chapter 7

Case No. 13-17450

Judge: Hon. Vincent F. Papalia

**STIPULATION AND CONSENT ORDER REGARDING PROOF OF CLAIM NO. 4-1
FILED BY THE UNITED STATES DEPARTMENT OF EDUCATION**

The relief set forth on the following pages, numbered two (2) through four (4) are hereby **ORDERED**

DATED: September 13, 2017

A handwritten signature in black ink, appearing to read "Honorable Vincent F. Papalia".

Honorable Vincent F. Papalia
United States Bankruptcy Judge

Debtor: Benjamin Jeffrey Ashmore

Bankr. Petition No. 13-17450

Caption of Order: Stipulation and Consent Order Regarding Proof of Claim Filed By U.S. Dep't of Education

The debtor, Benjamin Jeffrey Ashmore (the “Debtor”), and creditor, the United States Department of Education (“DOE”), enter into the following stipulation and consent order pertaining to proof of claim no. 4-1 filed by DOE (the “DOE Claim”):

WHEREAS, the DOE Claim was filed on May 19, 2016 in the amount of \$138,235.96; and

WHEREAS, the Debtor filed a motion under 11 U.S.C. §§ 502(c) and 105(a) to estimate the DOE Claim at \$0 for purposes of any distribution in these proceedings [ECF Doc. No. 99] (the “Claim Estimation Motion”); and

WHEREAS, in connection with the Claim Estimation Motion the Court, on June 9, 2016, entered an order shortening time and fixing the manner of notice (the “Order Shortening Time”) [ECF Doc. No. 101]; and

WHEREAS, the Claim Estimation Motion was served on DOE in accordance with the Order Shortening Time but not in accordance with Federal Rule of Bankruptcy Procedure 7004(b)(4), as incorporated by Rule 9014(b); and

WHEREAS, as reflected on the record of hearing on the Claims Estimation Motion, the Claim Estimation Motion was granted without opposition on June 29, 2016 and an order was entered [ECF Doc. No. 113] (the “Claim Estimation Order”); and

WHEREAS following entry of the Claim Estimation Order, the chapter 7 trustee sought approval of a settlement with the Debtor that will, *inter alia*, pay all allowed general unsecured claims in full [ECF Doc. No. 141] (the “Proposed Settlement”) in accordance with the terms thereof, but would pay no amount to DOE as a result of the Claim Estimation Order; and

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WHEREAS, undersigned counsel for DOE, upon learning of the Claim Estimation Order and the Proposed Settlement, has taken the position that: (i) the Claim Estimation Motion is unenforceable because it was not served in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(4), as incorporated by Rule 9014(b); and (ii) the relief requested in the Claim Estimation Motion was inappropriate because the DOE Claim is neither contingent nor unliquidated; and (iii) as a result of the Claim Estimation Order, the Proposed Settlement is objectionable to DOE for the reason that no payment would be made to DOE; and

WHEREAS, to resolve DOE's objections to the Proposed Settlement and proposed motion to vacate the Claim Estimation Order, the Debtor and DOE have agreed to the terms below:

IT IS HEREBY AGREED AND ORDERED AS FOLLOWS:

1. The Claim Estimation Order shall be deemed vacated in its entirety, effective upon entry of a final order approving the Proposed Settlement; and
2. Notwithstanding the failure of the Proposed Settlement to provide for a distribution on the DOE Claim, the Debtor shall make a payment of \$5,000.00 to DOE outside this chapter 7 case from funds available to him under the Funding Agreement (as defined in the Proposed Settlement); and
3. The above-referenced payment to DOE shall be due within ten (10) business days after entry of a final order approving the Proposed Settlement and, upon receipt, DOE shall be deemed to have forever waived any distribution in this chapter 7 case; and
4. The DOE Claim is nondischargeable under 11 U.S.C. § 523 and the debt

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underlying the DOE Claim shall continue to be governed pursuant to the terms of the Debtor's prepetition payment plan outside of bankruptcy.

5. This stipulation shall be binding upon the parties' respective heirs, successors and assigns.

IN WITNESS WHEREOF, the DOE and Debtor have agreed to the foregoing as of the dates written below.

Dated: September 1, 2017

Dated: September 1, 2017

**WILLIAM E. FITZPATRICK
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY**

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